

BEFORE THE

Federal Communications Commission **RECEIVED**

WASHINGTON, D.C.

SEP 24 1993

In re

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations
(Prineville and Sisters, Oregon)

MM Docket No. 92-3
RM-7874, RM-7958

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Chief, Mass Media Bureau

OPPOSITION TO APPLICATION FOR REVIEW

Various radio licensees serving Central Oregon communities (collectively, the "Licensees")^{1/} oppose Schuyler H. Martin's Application for Review of the FCC's Order Denying Motion to Strike ("Order"), 8 FCC Rcd 4471 (1993). The Order disposed of Martin's Motion to Strike the Licensees' Petition for Reconsideration of the Report and Order, 57 Fed. Reg. 47006 (October 14, 1992). Martin had falsely claimed that the Licensees' reconsideration request was late. The Licensees' Opposition to Martin's Motion to Strike advanced several arguments which rebutted that spurious charge. The Commission's Order wisely agreed that the Licensees' Petition was timely. Martin's Application for Review seeks to relitigate the issue.

Martin's Application for Review in all respects save one merely rehashes his prior arguments that this is a rule making "of particular [-- as opposed to general --] applicability." There is no need to burden the record by restating the Licensees'

^{1/} Our prior filings in this Docket set forth the Licensees' identities and associated broadcast stations.

prior rebuttals to his earlier-advanced flawed arguments. The Commission may review the record of this proceeding for the details, if it deems appropriate.

Martin's sole new ground for justifying review of the Order is that the Commission's Report and Order in MM Docket 91-348, 58 Fed. Reg. 38535 (1993), by which the Commission allowed certain FM station upgrades via a "one-step" (application) process, allegedly supports his characterization of this Docket's nature. Martin asserts that, had the Commission acted in MM Docket 91-348 early enough, he -- and only he -- could have availed himself of the one-step procedure and applied to upgrade his unbuilt Sisters facility. This, he claims, is proof positive of the "particular" nature of his upgrade request.

Martin's argument is fatally flawed. Pursuit of an upgrade via the new one-step process does not void others' potential interests in filing conflicting proposals or pleadings opposing the upgrade. That is because all would-be applicants and rule-making petitioners must protect the upgrade, assuming the pursuit yields success. An upgrade precludes all other conflicting proposals, regardless of the means by which one initiated the upgrade process. MM Docket 91-348's sole change as regards the general public is in the time available in which to file competing proposals.

Moreover, Martin's argument is a "what if." The plain fact is that Martin did not pursue the one-step process, but rather appears to have manipulated a notice-and-comment rule making of general applicability. Finally, the Order dismissed as an interlocutory pleading Martin's Petition for Reconsideration of

the issuance of a Public Notice of the Licensees' own Petition for Reconsideration of the Report and Order in this Docket. The Order (at n. 2) expressly stated that the Commission would deal with the merits of the Licensee's Petition for Reconsideration in a separate (not yet released) Memorandum Opinion and Order. Martin's Application for Review is thus a brazen attempt to seek review of an interlocutory action rejecting Martin's prior interlocutory pleadings. As such, it wastes the Commission's precious time and scarce resources.

Respectfully submitted,

THE LICENSEES

By


John Joseph McVeigh

Their Counsel

Fisher, Wayland, Cooper and Leader
1255 Twenty-third Street Northwest,
Suite 800
Washington, D.C. 20037-1170
(202) 659-3494

Date: September 24, 1993

CERTIFICATE OF SERVICE

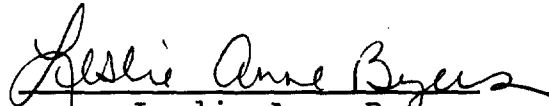
I, Leslie Anne Byers, a secretary to the law firm of Fisher, Wayland, Cooper and Leader, hereby certify that I have, this Twenty-fourth day of September, 1993, sent by hand delivery copies of the foregoing "**OPPOSITION TO APPLICATION FOR REVIEW**" to:

Roy J. Stewart, Esq.
Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street Northwest, Room 314
Washington, D.C. 20554

Douglas W. Webbink, Esq.
Chief, Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street Northwest, Room 8322
Washington, D.C. 20554

Irving Gastfreund, Esq.
Kaye, Scholer et al.
901 Fifteenth Street Northwest,
Suite 1100
Washington, D.C. 20005
Counsel to Schuyler H. Martin

Shelton M. Binstock, Esq.
1140 Connecticut Avenue Northwest,
Suite 703
Washington, D.C. 20036
Counsel to Danjon, Inc.


Leslie Anne Byers